

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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PARISH GOLDEN,

Plaintiff,

v.

SEALED  
ORDER

09-cv-150-bbc

JANEL NICKEL, GREG GRAMS,  
DYLON RADTKE, JAMES SPANGBERG,  
MIKE SAUNDERS, DAN WESTFIELD,  
JOHN BETT and MARK HEISE,  
in their official and individual capacities, and  
RICHARD RAEMISCH in his official capacity,

Defendants.  
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In an order dated March 25, 2010, I granted plaintiff's request for leave to proceed in forma pauperis on appeal and assessed him an \$8.32 initial partial payment of the \$455 filing fee. I asked him to submit a check or money order made payable to the clerk of court in that amount on or before April 15, 2010. Now plaintiff has filed a motion to use release account funds to pay the initial partial payment.

In his motion, plaintiff asks the court to order that he be allowed to use his release

account funds because he does not have \$8.32 in his regular account. He does not explain whether prison officials have denied his request to use his release account funds or even whether he notified the business office of the payment, as he was instructed to do in the March 25 order. Plaintiff seems to be aware that he is entitled to use funds from his release account to pay an initial partial payment. However, he may not do so if sufficient funds exist in his regular account or if he has no money in his release account. Unfortunately, I am unable to verify where, if anywhere, sufficient funds exist because plaintiff has not provided updated statements for his accounts. (The statement plaintiff submitted shortly after he filed his appeal shows that on March 19, 2010, the combined balance of both plaintiff's regular and release accounts was \$515.44.) Because it is unclear how much money, if any, plaintiff has in his separate accounts, I will grant plaintiff's motion only on the condition that 1) sufficient funds *do not* exist in his *regular* account; and 2) sufficient funds *do* exist in his *release* account. To insure that officials at the prison business office are aware of the conditional nature of the grant of plaintiff's motion, I am sending a copy of this order to the warden of the Columbia Correctional Institution.

Plaintiff's most recent trust fund account statement shows that he receives regular income to his account in the amount of approximately \$40 per month. The Court of Appeals for the Seventh Circuit has held that when a prisoner owes an initial partial payment for filing a complaint or a notice of appeal and he is receiving periodic income in his prison account, prison officials must collect the payment off the top of the next deposit to the account. Therefore, if plaintiff continues to receive steady income, he should be able

to make the \$8.32 payment with a short extension of the deadline. I will allow plaintiff an extension of time until April 29, 2010, in which to make the initial partial payment. If, by April 29, plaintiff fails to make the payment or show cause for his failure to do so, I will notify the court of appeals of his non-compliance so that it may take whatever action it deems appropriate with respect to his appeal.

ORDER

IT IS ORDERED that

1. Plaintiff Parish Golden's motion to use release account funds to pay the initial partial filing fee for his appeal, dkt. #132, is GRANTED on the condition that: 1) sufficient funds *do not* exist in his *regular* account; and 2) sufficient funds *do* exist in his *release* account.
2. Plaintiff may have an extension of time to April 29, 2010, in which to submit a check or money order payable to the clerk of court in the amount of \$8.32. If, by April 29, 2010, plaintiff fails to make the initial partial payment, I will notify the court of appeals of his non-compliance so that it may take whatever action it deems appropriate with respect to his appeal.

Entered this 5<sup>th</sup> day of April, 2010.

BY THE COURT:

/s/

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BARBARA B. CRABB  
District Judge